

ARKANSAS DEPARTMENT OF HEALTH, CENTER FOR LOCAL PUBLIC HEALTH

SUBJECT: Rules Pertaining to General Sanitation

DESCRIPTION: The following changes have been made to the Rules Pertaining to General Sanitation:

- Updated entire rule to reflect requirements of Act 315 of the 2019 General Assembly and replace “regulation” with “rule”;
- Added Section XII. Sanitary Infrastructure With Municipal Jurisdictions to the Table of Contents;
- Updated Section C. Connection to Public Sewer Required to match wording of Ark. Code Ann. § 14-235-304;
- Added Section XII with consensus wording pursuant to Act 708 of the 2019 General Assembly. This wording redefines certain improvement districts including debt and minimum water and sewer standards;
- Updated Section XIII. Penalty to match current law (Ark. Code Ann. § 20-7-101).

PUBLIC COMMENT: A public hearing was held on this rule on October 4, 2019. The public comment period expired on October 4, 2019. The agency provided the following summary of the single public comment it received and its response to that comment:

Commenter’s Name: David E. Johnson, General Counsel, Central Arkansas Water

COMMENT: ADH should provide guidance on the meaning of “designated utility service area.” **RESPONSE:** Mr. Charles Thompson, Arkansas Department of Health Deputy Chief Counsel, contacted the writers of the legislation pertaining to the wording of “designated utility service area” that was incorporated into the General Sanitation Rule revision. The sponsors indicated the wording was considered self-explanatory. If you have additional questions we will attempt to seek clarification.

Lacey Johnson, an attorney for the Bureau of Legislative Research, asked the following questions and received the following answers:

QUESTION #1: Where does the notice provision in the new Section XII come from?

RESPONSE: This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708. Right after session we had a meeting with stakeholders and the legislative sponsors to better understand the intent of Act 708, because the Act was broad and did not address specifics regarding improvement district water and sewer minimum standards. The language in the Rules are a result of that input and ADH understanding of legislative intent.

QUESTION #2: What is the statutory authority for the provision requiring a municipality’s express consent before infrastructure can be connected to or serviced by a

municipal utility? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708.

QUESTION #3: What is the statutory authority for the provision requiring infrastructure improvements to conform to a municipality's standard utility construction specifications and piping size requirements? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708.

QUESTION #4: Where does the provision allowing municipal utilities access to improvements during all phases of construction come from? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708.

QUESTION #5: Where does the 30-day timeliness definition come from? **RESPONSE:** [See answer to Question #1.] This was suggested language from stakeholders and legislative sponsors to effectuate the intent of Act 708 but not provide unreasonable delay to construction within improvement districts.

The proposed effective date is April 1, 2020.

FINANCIAL IMPACT: The agency indicated that this rule will not have a financial impact.

LEGAL AUTHORIZATION: The State Board of Health has the power to “make all necessary and reasonable rules of a general nature for . . . [t]he general amelioration of the sanitary and hygienic conditions within the state[.]” Ark. Code Ann. § 20-7-109(a)(1). Some of these changes implement Act 708 of 2019, sponsored by Representative Jasen Kelly, which concerned certain procedures of improvement districts. Act 708 instructed the Department of Health to “promulgate rules that establish minimum standards for water and sewer improvements made by districts under” the Act. *See* Ark. Code Ann. § 14-86-2205(a), *as created by* Act 708. The Act also instructed the Department to “promulgate rules necessary to implement” the Act. *See* Ark. Code Ann. § 14-86-2205(b)(1), *as created by* Act 708.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Arkansas Department of Health
DIVISION Center for Local Public Health
DIVISION DIRECTOR J. Don Adams, Center Director
CONTACT PERSON J. Terry Paul, Branch Chief, Environmental Health Branch
ADDRESS 4815 West Markham, Little Rock, AR 72205
PHONE NO. 501-661-2171 FAX NO. 501-661-2572 E-MAIL jpaul@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Laura Shue, General Counsel
PRESENTER E-MAIL Laura.Shue@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

- 1. What is the short title of this rule? Rule Pertaining to General Sanitation
- 2. What is the subject of the proposed rule? General sanitation requirements and planning.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No X _____
If yes, please provide the federal rule, regulation, and/or statute citation. _____
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ No X _____
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No X If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. § 20-7-101 et seq; Ark. Code Ann. § 14-236-101 et. seq; Act 708 of 2019
7. What is the purpose of this proposed rule? Comply with Act 708 of the 2019 General Assembly. Why is it necessary? Updates language to current law and provides stakeholders' consensus language regarding the above referenced act.
8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). <https://www.healthy.arkansas.gov/proposed-amendment-to-existing-rules>
9. Will a public hearing be held on this proposed rule? Yes x No _____
If yes, please complete the following:
Date October 4, 2019
Time: 9:00 a.m.
Place: Arkansas Department of Health, Dr. Joseph Bates Auditorium, 4815 West Markham St., Little Rock, AR 72205
10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
4:30 p.m. October 4th, 2019.
11. What is the proposed effective date of this proposed rule? April 1, 2020 or upon legislative approval
12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See attached
13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See attached
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Licensees. Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Health

DIVISION Center for Local Public Health

PERSON COMPLETING THIS STATEMENT J. Terry Paul, Branch Chief, Environmental

TELEPHONE NO. 501-661-2171 **FAX NO.** 501-661-2572 **EMAIL:** jpaul@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule Pertaining to General Sanitation

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X _____

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes X _____ No _____

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes _____

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

- (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No _____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Stricken language would be deleted from and underlined language would be added to present law.
Act 708 of the Regular Session

1 State of Arkansas As Engrossed: H3/7/19 H3/14/19 S3/27/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

HOUSE BILL 1663

4

5 By: Representative Kelly

6 By: Senator J. English

7

8

For An Act To Be Entitled

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AN ACT TO AMEND THE LAW CONCERNING CERTAIN PROCEDURES
OF IMPROVEMENT DISTRICTS; AND FOR OTHER PURPOSES.

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Subtitle

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TO AMEND THE LAW CONCERNING CERTAIN

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PROCEDURES OF IMPROVEMENT DISTRICTS; AND

16

FOR OTHER PURPOSES.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. Arkansas Code Title 14, Chapter 86, is amended to add an
additional subchapter to read as follows:

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Subchapter 22 – Financial Requirements and Minimum Standards of Districts

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26

14-86-2201. Definition.

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(a) As used in this subchapter, “district” means any improvement
district in Arkansas, including without limitation:

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29

(1) Levee, drainage, road, irrigation, watershed, consolidated
utility, and river improvement districts formed or operating under:

30

31

(A) Section 14-86-101 et seq.;

32

(B) Section 14-87-101 et seq.;

33

(C) Section 14-88-101 et seq.;

34

(D) Section 14-89-101 et seq.;

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(E) Section 14-90-101 et seq.;

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(F) Section 14-91-101 et seq.;



- 1 (G) Section 14-92-101 et seq.;
- 2 (H) The Property Owners' Improvement District Law, §
3 14-93-101 et seq.;
- 4 (I) The Municipal Property Owner's Improvement
5 District Law, § 14-94-101 et seq.;
- 6 (J) Section 14-95-101 et seq.;
- 7 (K) Section 14-114-101 et seq.;
- 8 (L) The Interstate Watershed Cooperation Act, § 14-
9 115-101 et seq.;
- 10 (M) The Arkansas Irrigation, Drainage, and Watershed
11 Improvement District Act of 1949, § 14-117-101 et seq.;
- 12 (N) Section 14-118-101 et seq.;
- 13 (O) Section 14-119-101 et seq.;
- 14 (P) Section 14-120-101 et seq.;
- 15 (Q) Section 14-121-101 et seq.;
- 16 (R) Section 14-122-101 et seq.;
- 17 (S) Section 14-123-101 et seq.;
- 18 (T) Section 14-124-101 et seq.;
- 19 (U) The Rural Development Authority Act, § 14-188-
20 101 et seq.;
- 21 (V) The General Consolidated Public Utility System
22 Improvement District Law, § 14-217-101 et seq., and serving less than thirty
23 thousand (30,000) residents;
- 24 (W) Section 14-218-101 et seq.;
- 25 (X) Section 14-249-101 et seq.;
- 26 (Y) Section 14-250-101 et seq.; and
- 27 (Z) Section 14-251-101 et seq.; or
28 (2) Levee, drainage, road, irrigation, watershed, and river
29 improvement districts created by a special act of the General Assembly.
- 30 (b) As used in this subchapter, "district" does not include levee,
31 drainage, road, irrigation, watershed, consolidated utility, and river
32 improvement districts formed or operating under:
- 33 (1) The Water Authority Act, § 4-35-101 et seq.;
- 34 (2) The Regional Water Distribution District Act, § 14-116-101
35 et seq.;
- 36 (3) The Conservation Districts Law, § 14-125-101 et seq.;

- 1 (4) Section 14-184-101 et seq.;
- 2 (5) Section 14-187-101 et seq.;
- 3 (6) The General Consolidated Public Utility System Improvement
- 4 District Law, § 14-217-101 et seq., and serving more than thirty thousand
- 5 (30,000) residents;
- 6 (7) Section 14-282-101 et seq.;
- 7 (8) Section 14-283-101 et seq.;
- 8 (9) Section 14-284-101 et seq.;
- 9 (10) Section 14-285-101 et seq.;
- 10 (11) Section 14-286-101 et seq.;
- 11 (12) Section 14-287-101 et seq.;
- 12 (13) Section 14-316-101 et seq.;
- 13 (14) Section 14-317-101 et seq.;
- 14 (15) Section 14-318-101 et seq.;
- 15 (16) Section 14-319-101 et seq.;
- 16 (17) Section 14-320-101 et seq.;
- 17 (18) Section 14-321-101 et seq.;
- 18 (19) Section 14-322-101 et seq.;
- 19 (20) Section 14-386-101 et seq.; or
- 20 (21) Section 14-387-101 et seq.

21
22 14-86-2202. Record retention and public examination of records.

23 (a) A district covered under this subchapter shall retain all

24 financial records, bank statements, and contracts relating to the bonds,

25 notes, or other evidences of indebtedness undertaken by the district during

26 the existence of the district and for five (5) years following dissolution of

27 the district.

28 (b) Any person who negligently violates any of the provisions of this

29 subchapter is guilty of a Class C misdemeanor for each violation.

30 (c) Any person who purposely violates any of the provisions of this

31 subchapter is guilty of a Class B misdemeanor for each violation.

32 (d) The Freedom of Information Act of 1967, § 25-19-101 et seq.,

33 applies to records retained under this subchapter.

34
35 14-86-2203. Subsequent indebtedness.

36 (a)(1) After the initial creation, bonding, and indebtedness of a

1 district, but before subsequent bonds, notes, or indebtedness are incurred
2 under the authority of this subchapter, a majority of the owners of record in
3 the district, including no less than a majority of the total number of real
4 property owners in the area affected if the majority of owners owns more than
5 half of the acreage affected, shall be required to authorize the issuance of
6 bonds or the incurring of notes or indebtedness by a vote called by the
7 governing body of the district for that purpose.

8 (2) Subdivision (a)(1) of this section does not apply to:

9 (A) The Interstate Watershed Cooperation Act, § 14-115-101
10 et seq.;

11 (B) The Arkansas Irrigation, Drainage, and Watershed
12 Improvement District Act of 1949, § 14-117-101 et seq.;

13 (C) Section 14-118-101 et seq.;

14 (D) Section 14-120-101 et seq.;

15 (E) Section 14-121-101 et seq.;

16 (F) Section 14-122-101 et seq.;

17 (G) Section 14-123-101 et seq.;

18 (H) Section 14-124-101 et seq.; or

19 (I) A district seeking an increase in fees, taxes, or
20 assessments without the issuance of bonds, liens, or other indebtedness.

21 (b) The governing body shall not require a vote if:

22 (1) The indebtedness is necessary to fulfill directives of a
23 regulatory governmental agency;

24 (2) The district has one thousand (1,000) or more owners of
25 record;

26 (3) The bonds, notes, or indebtedness do not include the
27 assessed property as specific collateral for the bonds, notes, or
28 indebtedness; or

29 (4) The indebtedness is incurred for the refunding of
30 outstanding bonds, notes, or indebtedness of the district for the purpose of
31 reducing debt service and creating economic savings.

32 (c) Before incurring the indebtedness, the secretary or other
33 administrative officer of the governing body shall:

34 (1) Give notice of the required action and improvement by
35 publication one (1) time per week for two (2) weeks in a newspaper published
36 and having a general circulation in the county; and

1 (2) Transmit a copy of the notice by certified mail to each
2 owner of real property within the boundaries of the district.

3
4 14-86-2204. Nominal assessments.

5 (a)(1) All lands shall be assessed as to value and taxed within the
6 boundaries of the district, and no exclusions or nominal assessments apply
7 except under subsection (b) of this section.

8 (2) Subdivision (a)(1) of this section does not apply to:

9 (A) The Interstate Watershed Cooperation Act, § 14-115-101
10 et seq.;

11 (B) The Arkansas Irrigation, Drainage, and Watershed
12 Improvement District Act of 1949, § 14-117-101 et seq.;

13 (C) Section 14-118-101 et seq.;

14 (D) Section 14-120-101 et seq.;

15 (E) Section 14-121-101 et seq.;

16 (F) Section 14-122-101 et seq.;

17 (G) Section 14-123-101 et seq.;

18 (H) Section 14-124-101 et seq.; or

19 (I) A district seeking an increase in fees, taxes, or
20 assessments without the issuance of bonds, liens, or other indebtedness.

21 (b) At its option, any state agency or commission may choose to be
22 excluded from any newly formed district.

23
24 14-86-2205. Minimum standards for water and sewer improvements made by
25 districts – Rules.

26 (a) The Department of Health shall promulgate rules that establish
27 minimum standards for water and sewer improvements made by districts under
28 this subchapter.

29 (b)(1) The department shall promulgate rules necessary to implement
30 this section.

31 (2)(A) When adopting the initial rules to implement this
32 section, the final rule shall be filed with the Secretary of State for
33 adoption under § 25-15-204(f):

34 (i) On or before January 1, 2020; or

35 (ii) If approval under § 10-3-309 has not occurred
36 by January 1, 2020, as soon as practicable after approval under § 10-3-309.

1 (B) The department shall file the proposed rule with the
2 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
3 2020, so that the Legislative Council may consider the rule for approval
4 before January 1, 2020.

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/s/Kelly

APPROVED: 4/4/19

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1430

(906 pages)

5 By: Representative Dotson
6 By: Senator B. Ballinger
7

For An Act To Be Entitled

8
9 AN ACT TO ELIMINATE UNNECESSARY REFERENCES TO
10 REGULATIONS THROUGHOUT THE ARKANSAS CODE; TO PROVIDE
11 FOR CONSISTENT REFERENCES TO RULES THROUGHOUT THE
12 ARKANSAS CODE; TO CHANGE THE NAME OF A ARKANSAS
13 LEGISLATIVE COUNCIL SUBCOMMITTEE; TO AMEND PORTIONS
14 OF THE ARKANSAS CODE RESULTING FROM INITIATED ACT 1
15 OF 1914, INITIATED ACT 4 OF 1948, INITIATED ACT 1 OF
16 1988, AND INITIATED ACT 1 OF 1996; AND FOR OTHER
17 PURPOSES.
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Subtitle

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21 TO ELIMINATE UNNECESSARY REFERENCES TO
22 REGULATIONS AND TO PROVIDE FOR CONSISTENT
23 REFERENCES TO RULES THROUGHOUT THE
24 ARKANSAS CODE; AND TO CHANGE THE NAME OF
25 A ARKANSAS LEGISLATIVE COUNCIL
26 SUBCOMMITTEE.
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28

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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31 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

32 (a) The General Assembly finds:

33 (1) The Administrative Procedure Act, § 25-15-202(9)(A) defines
34 "rule" as "an agency statement of general applicability and future effect
35 that implements, interprets, or prescribes law or policy, or describes the
36 organization, procedure, or practice of an agency and includes, but is not

